

**ST 05-3**

**Tax Type: Sales Tax**

**Issue: Exemption From Tax (Charitable or Other Exempt Types)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC, INC.,**

**Applicant**

**No. 04-ST-0000  
FEIN: 00-0000000**

**Application for Sales Tax  
Exemption**

**Ted Sherrod**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler, on behalf of the Illinois Department of Revenue; John J. Piccione of Piccione, Keeley & Associates, Ltd. on behalf of ABC, INC..

**Synopsis:**

ABC, INC. ("Applicant") applied to the Department of Revenue ("Department") for an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use and related taxes. The Department denied the application, and the Applicant timely protested this denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized exclusively for charitable purposes under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers' Occupation Tax Act (35 ILCS

120/2-5(11)). After reviewing the record, it is recommended that the Department's decision be affirmed.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's STAX-304, Second Denial of Sales Tax Exemption, wherein Applicant's request for exempt status was denied. Department ("Dept.") Exhibit(s) ("Ex.") 1.
2. Applicant is an Illinois not-for-profit corporation organized for purposes of promoting the art and science of aviation, and enlarging, enhancing and disseminating engineering and scientific knowledge and applications of flight techniques. Applicant is affiliated with ABC Engineering, an aerospace engineering organization, and with ABC Group, an administrative service company established to service ABC Engineering, Applicant and the ABC Foundation. Tr. pp. 39, 66, 67; Applicant Ex. 1.
3. John Doe and Ron Doe are the founders and sole members of the Applicant, and, pursuant to the Applicant's by-laws, have exclusive authority to appoint the Applicant's Board of Directors and (upon the resignation of a member) to replace a member. John Doe is a principal executive of ABC Engineering and a member of the chief executive officer council of ABC Group. Ron Doe is employed as ABC Engineering's Director of Aerospace and is President of ABC, Inc.. Tr. pp. 18, 50, 67, 68; Applicant Ex. 2, 17.
4. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal

Revenue Service in October, 2002. This exemption remains in full force and effect. Applicant Ex. 3, 4.9.

5. During 2003 and 2004, Applicant's operations centered around a series of programs that promote public interest in, and seek to advance the study and application of aircraft engineering and manufacturing. These programs consisted of:

- Conducting aerospace education camps for grade school, and high school students; Tr. pp. 81, 82, 84 - 89, 97; Applicant Ex. 5, 6, 7, 9;
- Participating in the Civil Air Patrol Flight camp; Tr. pp. 82 - 85, 89; Applicant Ex. 8;
- Conducting classes for high school and college students and for aviation professionals; Tr. pp. 90 - 93, 97; Applicant Ex. 5, 6, 10, 11;
- Maintaining a 30' X 30' classroom and 15' X 15' laboratory (machine shop) for use exclusively for education and training; Tr. pp. 75, 76; and
- Assisting other not-for-profit corporations in the construction of replicas of historic aircraft (e.g. the Wright Brothers airplane); Tr. pp. 94, 95, 100, 101, 110 - 113; Applicant Ex. 12.

6. During June, 2004, Applicant participated in a week long Civil Air Patrol Flight Camp in Anywhere, Illinois, and donated the use of the Applicant's aircraft to this group. Applicant received this aircraft, a 1961 Cessna 182, as a donation from John Doe in 2003. Tr. pp. 53, 82 - 85, 89; Applicant Ex. 4.3, 8.

7. On May 8, 2004, Applicant sponsored a half day Aerospace Education Camp for 16 students from the 5<sup>th</sup> grade class at Anywhere Elementary School at its

- classroom and laboratory located in a hanger at the Airport in Anywhere, Illinois. Because space was available for only a limited number of students, students competed for selection based upon essays they submitted indicating their interest in aviation science and engineering. Participation in all aspects of this camp was offered without charge. Applications for participation were only accepted from students in the 5<sup>th</sup> grade at the Anywhere Elementary School in Anywhere, Illinois. Tr. pp. 80 - 82, 89; Applicant Ex. 5, 7.
8. During July, 2004, Applicant presented two separate 5 day long programs of instruction on aviation science and engineering entitled the “Top Gun Aviation Camp.” These programs were presented at the Applicant’s classroom and laboratory in its hanger at the Airport and were attended only by students from Anywhere High School. The program offered from July 12 – 16 provided instruction to 13 participants, and the program offered from July 19 – 23 offered instruction to 7 participants. Tr. pp. 85 - 89; Applicant Ex. 5, 9.
  9. Applicant developed a curriculum of instruction called the “Saturday Scholars Program” or “Flight XP” program which was offered on one Saturday in October and one Saturday in November, 2004 at Applicant’s classroom and laboratory. Approximately 13 students attended class from 9:00 a.m. to 1 p.m. on Saturday, October 23, 2004 and 9 students attended classes from 9:00 a.m. to 1 p.m. on Saturday, November 6, 2004. Students attending these classes were from Central High School, School, West High School and College of Anywhere. Notices advertising this program were sent to science departments at high schools in and around Anywhere, including schools in Anywhere (Anywhere High School),

(East High School) and (Central High School, North High School and Valley High School). Tr. pp. 90, 91; Applicant Ex. 5, 10.

- 10.** Applicant sponsored activities on 13 days during 2004. Activities held on 11 of these 13 days or 85% of these activities, were open only to students enrolled at a particular school. Tr. pp. 80 – 82, 85 – 89; Applicant Ex. 5, 7, 9.
- 11.** Training during Applicant's camps and educational programs focused on "hands on" and "skill based" instruction in the use of engine lathes, mills and welding equipment, and other machinery, and training in the history of aviation and the engineering and science behind this field. Tr. pp. 75, 76, 80, 81, 85, 86, 90, 91, 110; Applicant Ex. 9, 10.
- 12.** Organizations (such as schools) that participate in Applicant's aerospace camps and other activities must pay a fee for the privilege of doing so. Applicant Memorandum of Law p. 2.
- 13.** On October 1, 2004, Applicant presented a program on ultra-light aircraft maintenance and safety at its classroom and laboratory to pilots, mechanics and airplane "enthusiasts." This program was open to adults rather than college and pre-college students, and was advertised on the Federal Aviation Administration's website. Tr. pp. 92, 93; Applicant Ex. 11.
- 14.** Applicant's camps and structured instruction programs did not commence until 2004. During 2003, its charitable activities were limited to assisting other 501 (c)(3) corporations in the development and construction of replica aircraft, principally, an exact replica of the Wright Brothers original aircraft to celebrate the 100<sup>th</sup> anniversary of flight. This assistance included constructing a replica

engine for the replica Wright Brothers aircraft displayed at the Museum of Science and Industry during the centennial celebration of flight. The Applicant received no remuneration of any kind from the corporations it assisted. Tr. pp. 93 - 96, 99, 100, 110 – 113; Applicant Ex. 4.5, 4.9, 12.

**15.** Applicant conducts its activities primarily from a 6000 square foot hanger at Anywhere Airport, which it leases from the Village of Anywhere. Applicant also stores its aircraft in this hanger. Applicant paid rent of \$21,000 to lease this hanger in 2003 and \$15,750 to lease this hanger from January 1, 2004 to September 30, 2004. A portion of the hanger the Applicant leases is not needed for the Applicant's activities, and is subleased to four persons, who use the space they sublease to store aircraft. None of these tenants are connected with the Applicant, ABC Engineering, or any affiliate of these organizations. Tr. pp. 55, 56, 72 – 77; Applicant Ex. 4.5, 4.8.

**16.** Applicant's sources of revenue for the period January 1, 2003 through December 31, 2003 were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>
Direct public support – cash	\$55,459.18
Direct public support - Gifts in kind	\$84,236.51
Gross rent (Less expense – ½ of utilities)	\$ 4,475.00 (\$1,792.20)
Special Events gross revenue (Less expenses)	\$8,122.05 (\$6,774.48)
<b>TOTAL</b>	<b>\$143,726.06</b>

Applicant Ex. 4.5

**17.** Applicant's expenses for the same period were as follows:

<b>EXPENSE</b>	<b>AMOUNT</b>
Airplane hanger rent	\$21,000
Airplane depreciation	\$16,847.30
Repair and maintenance – Airplane	\$6,060.90
A&M Maintenance	\$1,000.01
Phillips 66 Fuel	\$ 266.59
Bank fees	\$ 15.00
Digigraphics	\$ 171.00
Travel	\$ 134.30

Meals	\$ 78.29
Library	\$ 1,141.62
Marketing and sales	\$ 522.73
Utilities	\$ 1,792.20
Repair and maintenance Building	\$ 248.00
Digital Imaging Service	\$ 52.50
Illinois DOT	\$ 20.00
AOPA Insurance	\$ 1,356.00
Supplies	\$ 973.79
Xerox	\$ 20.00
Delivery	\$ 10.75
TOTAL	\$51,711.46

Applicant Ex. 4.5

**18.** Applicant's sources of revenue for the period January 1, 2004 through September 30, 2004 were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>
Direct Public Support	\$ 49,594
Program service revenue	\$ 675
Gross rents	\$ 3,475
Less expenses	(\$ 1,335)
TOTAL	\$ 52,409

Applicant Ex. 4.8

**19.** Applicant's expenses for the same period were as follows:

<b>EXPENSE</b>	<b>AMOUNT</b>
Airplane hanger rent	\$ 15,750
Airplane depreciation	\$ 20,217
Repair and maintenance – Airplane	\$ 32,104
Supplies	\$ 13,916
Professional development	\$ 575
State of Illinois	\$ 153
Bank fees	\$ 23
Travel	\$ 462
Meals	\$ 514
Utilities	\$ 1,335
Repair and maintenance -building	\$ 21
<b>TOTAL</b>	<b>\$ 85,070</b>

Applicant Ex. 4.8

**20.** As of September 30, 2004, Applicant had an accumulated surplus \$59,355.02 resulting from a current year surplus as of 12/31/03 of 92,014.60 less its 12/31/04 deficit of (\$32,659.58). Applicant Ex. 4.2.

**Conclusions of Law:**

The Use Tax Act ("Act") (35 **ILCS** 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 **ILCS** 105/3. Section 3-5 of the Act provides a list of tangible personal property that is exempt from tax, and includes the following: “(4) Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution

organized and operated exclusively for charitable, religious, or educational purposes ...  
[.] On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department." 35 ILCS 105/3-5(4). Section 2 - 5 (11) of the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.* contains a similar provision. (See 35 ILCS 120/2-5(11)).

The Applicant has requested an exemption number pursuant to these provisions, which the Department has denied on the basis that the Applicant did not demonstrate that it operates for exclusively charitable purposes. Dept. Ex. 1. The Department's denial of the taxpayer's claim for an exemption identification number is presumed to be correct, and the taxpayer has the burden of clearly and conclusively proving its entitlement to the exemption. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1<sup>st</sup> Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4<sup>th</sup> Dist. 1990). Rather, the taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community, *supra* at 459. Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (*id.*) with all facts construed and debatable questions resolved in favor of taxation. *Id.*

Although it was a case concerning a property tax exemption, the Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) in determining whether an entity qualifies as one organized and operated for charitable purposes. Wyndemere Retirement Community, *supra*; Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298, 303-04 (2000). These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2) earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen, *supra* at 156-57.

Also, the term "exclusive" means the primary, and not incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1<sup>st</sup> Dist. 1987). In addition, while there may be restrictions on a group benefited by the entity's charity, "the service rendered to those eligible must act to relieve the public of an obligation, moral or economic, which it would otherwise have to such beneficiaries or it must confer some general benefit onto the public." *Id.* at 435. Finally, it is not enough that the entity's organizational documents profess a charitable purpose. Instead, an analysis of the applicant's activities is necessary to determine whether it actually is a charitable institution. Wyndemere Retirement Community, *supra* at 460; Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3d Dist. 1987).

It is acknowledged that the Korzen guidelines are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-69 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, the applicant primarily serves non-exempt interests such as those of its own dues paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association, *supra*) or operates primarily in the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, *supra*.

The first step in determining whether an organization is charitable is to consider the provisions of its charter. Morton Temple Association, *supra*. A review of the record reveals that Applicant's Articles of Incorporation and by-laws contain the following wording: "(T)he purpose of the corporation shall be exclusively charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code, 35 **ILCS** 105/3-5, and 35 **ILCS** 120/2-5 and, subject to the foregoing, the corporation shall devote all of its income and assets to provide scientific, literary, and educational programs ... [.]” Applicant Ex. 1, 2. While this language supports the Applicant's exemption claim, an applicant does not prove its claim merely by including language in its organizational documents professing a charitable purpose. The Appellate Court has held that “statements of agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity].” *Id.* at 796.

Therefore, “it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter.” *Id.*<sup>1</sup>

In the instant matter, the record is devoid of any evidence that the Applicant has capital, capital stock or shareholders. Nor is there any evidence in the record that Applicant provides gain or profit in a private sense to any person connected with it. The absence of such attributes is corroborated by the Applicant’s status as a 501(c)(3) corporation under the federal Internal Revenue Code. See 26 U.S.C.A. § 501(c)(3) (describing an exempt corporation pursuant to this section as one in which “no part of the net earnings ... inures to the benefit of any private shareholder or individual”). Moreover, the Applicant’s by-laws do not require the payment of dues. Applicant Ex. 2.

Applicant's federal tax return supports a determination that the primary source of its funds is donations. The Applicant reported on its IRS form 990 “Return of Organization Exempt From Income Tax” that it received \$139, 696 from “Contributions, gifts, grants and similar amounts” out of total revenues of \$143,727. Applicant Ex. 4.9. This and other documentary evidence in the record (see Ex. 4.3 through 4.8) corroborates testimony in the record (Tr. pp. 53, 58) that the Applicant’s principal source of funding is charitable donations. Based on this evidence, I conclude that Applicant's funds are generated almost entirely from private gifts and donations.

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<sup>1</sup> Even if statements contained in the Applicant’s charter and by-laws were decisive factors in determining the Applicant’s exempt status, the by-laws and the charter entered into the record in this case would be entitled to little weight. The record indicates that the purpose clauses of both the Applicant’s charter and its by-laws were amended on December 4, 2004, only 4 days before the hearing in this matter on December 8, 2004. The timing of these amendments strongly suggests that they were made in anticipation of the current litigation. The Illinois courts have repeatedly held that evidence produced in anticipation of litigation is entitled to little or no weight. *In Re A.B.*, 308 Ill. App. 3d 227 (2d Dist. 1999); *Kelly v. HCI Heinz Construction Co.*, 282 Ill. App. 3d 36 (4<sup>th</sup> Dist. 1996); *People v. Main Insurance Co.*, 114 Ill. App. 3d 334 (1<sup>st</sup> Dist. 1983); *Tie Sys v. Telecom Midwest*, 203 Ill. App. 3d 142 (1<sup>st</sup> Dist. 1990).

The Department contends that donations from John Doe, the founder of the Applicant, and ABC Engineering, an affiliated organization, should not be taken into account in determining the percentage of the Applicant's revenues from charitable donations. Tr. pp. 118 - 119.<sup>2</sup> However, the Department has cited no authority for this proposition. While evidence of disproportionate contributions by the founder of an organization has been cited as a basis for denying a charitable exemption (see Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 400 (1957)), this determination was based on evidence that the intent of the organization at issue was primarily to benefit its owner. Again, there is no evidence in the record that John Doe or anyone else benefited in a private sense from the Applicant's operations.

The Department's determination appears to have been based in part upon the Department's conclusion that the Applicant's financial structure is inconsistent with that of an "institution of public charity" because Applicant derived revenues from rental fees from its sublease of hanger space for private aircraft. Tr. p. 118. Indeed, the Department argues that a majority of the Applicant's revenues in 2003 and 2004 were from such rents rather than from charity if contributions by the Applicant's founder, John Doe, and from ABC Engineering are not taken into account. *Id.* As noted above, the Department has cited no authority permitting such contributions to be disregarded in determining the amount and percentage of charitable donations. Moreover, the record shows that, even if contributions by John Doe and ABC Engineering are disregarded, the Applicant received \$12,700 from other contributors in 2003. Applicant Ex. 4.4. That amount is almost three times the amount of gross rents it received (\$4,475) during that year. See Applicant Ex.

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<sup>2</sup> The record indicates that during 2003, 89% and during 2004 60% to 70% of contributions came from John Doe, a founder of ABC, Inc. and ABC Engineering. Applicant Ex. 4.4, 4.7.

4.5. The record also shows that the Applicant received contributions in the amount of \$18,094 from sources other than John Doe and ABC Engineering during the first nine months of 2004 (Applicant Ex. 4.7) compared to gross rents of \$3,475 (Applicant Ex. 4.8) during that period. Accordingly, the record does not support the Department's claim that gross rents were the primary source of Applicant's income during 2003 and 2004.

While the foregoing analysis indicates that the Applicant meets several of the tests enumerated in Korzen, the record nevertheless shows that the Applicant fails to satisfy at least two of the "distinctive characteristics" (Korzen, *supra* at 157) of exempt charities indicated in this case. The record indicates that the Applicant sponsored camps and instruction on a total of 13 days during the entire year of 2004. See Findings of Fact number 10. (The record does not indicate the period of Applicant's activities during 2003). The record also shows that the vast majority of its services are available only to particular schools in a selected "service area" (Applicant Ex. 2 at section 3.2(k)) that agree to pay a fee to be eligible to participate in the Applicant's programs. See Applicant Memorandum of Law at page 2 ("Beginning in 2005, the Corporation may charge nominal fees ... to the organizations (such as schools) with which the Corporation works").<sup>3</sup> 85% of these activities were only open to students at a single particular school. See Findings of Fact number 10. The fact that Applicant provides services almost entirely to students affiliated with such institutions during only 13 days per year establishes that the Applicant operates in a limited manner and for a limited class of persons. I cannot ascertain the precise size of the Applicant's "service area" or the number of institutions in it because Applicant did not submit into evidence any

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<sup>3</sup> The record indicates that such fees were also collected in 2004. See Ex. 4.8 referring to "program service revenue."

information about how it selects participating organizations. However, the record suggests that one criterion is the proximity of these schools to the Applicant's facilities in Bolingbrook, Illinois. The record also indicates that, with the exception of Applicant's program on light aircraft maintenance and safety in October, 2004, the Applicant's activities were attended exclusively by students from elementary schools, high schools and colleges in and around this location.<sup>4</sup> Moreover, two of the Applicant's principal activities in 2004, the Aerospace Education Camp in May, 2004, and Applicant's two five day "Top Gun Aviation Camp" sessions, constituting 85% of Applicant's activities (measured by number of days of activities) were attended by students that were all enrolled in a particular school. *Id.* Limiting eligibility for participation in Applicant's main activities only to students at a particular school, or at institutions that are selected by the Applicant and agree to pay to participate in the Applicant's programs inherently limits Applicant's intent to service those not falling within such boundaries. Accordingly, I conclude that Applicant neither operates for the "benefit of an indefinite ... number of persons" nor "makes its services available to all who need and would avail themselves" of them as outlined in Korzen.

The self-limitations Applicant places upon its services to the public are not based upon available funds. The record shows that the Applicant has consistently dispensed services having a value far less than its available means. Thus, in 2003, its first year of

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<sup>4</sup>I have given little weight to the ultra-light aircraft maintenance and safety class the Applicant conducted for the following reasons. The record shows that the Applicant is completely controlled by John Doe and Ron Doe, principals of ABC Engineering. See Findings of Fact number 3. These individuals have the power to appoint the Applicant's directors and exercise complete authority over its affairs. *Id.* Given these facts, and the nature of ABC Engineering's aviation engineering and consulting business, it was incumbent upon the Applicant to show that this activity was not engaged in primarily for the purpose of attracting customers for ABC Engineering or otherwise benefiting that company.

operations, Applicant had a year end balance of \$92,014. Applicant Ex. 4.5. In fact, the record shows that in each full or partial year since its incorporation in 2002, Applicant has had a significant, positive year end balance. Applicant Ex. 4.1, 4.2, 4.5. This surplus indicates that Applicant would have had no trouble increasing the availability of its beneficial activities. Indeed, given the Applicant's continuing surplus throughout its existence, the meager scope of its endeavors is difficult to understand. Clearly these limitations are not based upon available funds or concerns about Applicant's fiscal health.

Applicant, by not making it widely known that it provides charity, clearly limits the charity that it extends. Korzen, *supra*; see also Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987) (exemption denied where those who might benefit from free care offered by hospital not made aware of hospital charity). This, in addition to the fact that the self-limits Applicant places on its philanthropy is not connected with its financial ability to expand its services, causes me to conclude that the Applicant places obstacles in the way of those who need and might wish to avail themselves of its services. In these respects, the Applicant lacks the "distinctive characteristics" of a charity. Korzen, *supra*.

Applicant's financial structure provides additional evidence of the non-exempt character of its operations. A charity derives its funds mainly from public and private donations, and holds such funds in trust for those it purports to benefit. Korzen, *supra* at 157. As noted above, Applicant derives its revenues from appropriate sources. However, the record shows that during 2003 and 2004, all of the Applicant's expenses were for the administration and maintenance of Applicant's aircraft and the lease and maintenance of

its hanger facility. Indeed, a majority of these expenses were to maintain and license the Applicant's aircraft (see Applicant Ex. 4.5, 4.8), even though the record does not indicate that the aircraft was ever used in the Applicant's camps and instructional programs. (The record, at page 84, indicates that Applicant's only use of the aircraft was in connection with the Civil Air Patrol camp in June, 2004, an activity the Applicant did not sponsor).

In Rogers Park Post No. 108, *supra*, the Illinois Supreme Court found it significant that the record before it contained no evidence of "any expenditures by plaintiff for charitable purposes." Rogers Park, *supra* at 291. See also Morton Temple, *supra* at 796. Moreover, in Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991), the court denied exempt status to an organization that spent approximately 69 percent of its gross receipts (\$3,009.10 out of \$4,332.62) on building maintenance, insurance and other operational expenses. The court found such expenses indicative of appellant's primary purposes, one of which, it concluded, was to "maintain its property ... [.]" Albion Ruritan Club, *supra* at 919. Here, Applicant's financial statements establish that all of its disbursements are spent in furtherance of its operating costs, principally the maintenance of its aircraft. In fact, the Applicant's financials show virtually no grants or other expenditures to provide camp and instructional services constituting the Applicant's purported charitable activities during the entire period of Applicant's existence. Given the nature of Applicant's expenditures to date, it is difficult to justify granting Applicant an exemption number since Applicant's past experience suggests it might well be used to purchase items that are not directly used to further charitable activities. Tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. Such detriments

can only be warranted if lost resources are otherwise used to directly benefit the public through the support of truly charitable expenditures.

The Applicant contends that the financial statements are misleading because they understate the Applicant's charitable effort by not accounting for administrative services provided by ABC Group without charge and for volunteer services. Tr. pp. 50 – 53, 55. The Applicant values these services at approximately \$50,000 per year in 2003 and 2004. Tr. pp. 53, 99, 100. However, the Applicant has presented no documentary evidence, in the form of accounting records, showing amounts billable to the Applicant by ABC Group that were not charged, or time sheets or similar records showing the amount of time spent by volunteers assisting the Applicant. Again it must be noted that mere testimony is insufficient to overcome the Department's *prima facie* case. Sprague v. Johnson, *supra*.

Moreover, even if the Applicant's estimate of the value of volunteer and other services had been proven by documentary evidence, the value of these services (\$50,000 per year) would be far less than the Applicant's operating expenses (\$92,014 in 2003, and \$85,069 in 2004). Indeed, this estimated amount of "in kind" services only modestly exceeds the average amount of expense attributable to the Applicant's seldom used aircraft during these years.<sup>5</sup>

The mere fact that applicant's financial records show a surplus is not sufficient, in and of itself, to prevent the Applicant from obtaining exempt status. Children's

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<sup>5</sup> The record indicates that Applicant attributed \$25,283 in expense to aircraft depreciation, repair and maintenance, registration fees and insurance in 2003, and \$52,321 in expense to airplane depreciation, repair and maintenance in 2004 resulting in annual average expense attributable to the aircraft of \$38,802 during each of these years. Applicant Ex. 4.5, 4.8.

Development Center v. Olson, 52 Ill. 2d 332 (1972). Nevertheless, the fact that the Applicant is able to maintain a sizeable surplus at the same time it is able to comfortably cover its ample operating expenses suggests that dispensing “charity” is certainly not the primary focus of the Applicant’s endeavors. See Rotary International v. Paschen, 14 Ill. 2d 480 (1958).

For the foregoing reasons, I conclude that Applicant does not have the essential characteristics of a charity, as illustrated by the court’s opinions in Korzen, *supra*, Rogers Park, *supra* and Albion Ruritan Club, *supra* of disbursing funds primarily to provide charitable grants and benefits. The foregoing considerations lead me to conclude that the Applicant has not demonstrated, by the presentation of testimony or through exhibits, evidence sufficient to overcome the Department's *prima facie* case and that the Applicant does not qualify for exemption from use and related taxes as a "corporation, society, association, foundation or institution organized and operated exclusively for ... charitable ... purposes" within the meaning of 35 ILCS 105/3-5(4) and 35 ILCS 120/2-5(11).

Applicant attempts to defeat the preceding analysis by arguing that it constitutes a "charity" falling within the scope of this term as defined in Friends of Israel Defense Fund v. Department of Revenue, *supra*. Applicant Memorandum of Law at pp. 3 – 6. While Friends of Israel Defense Fund is instructive, the seminal case in Illinois addressing the definition of the term “charity” is Crerar v. Williams, 145 Ill. 625 (1893). In this case, the Illinois Supreme Court delineates the parameters of this definition as follows: “[A] charity [is a] gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons ... or otherwise lessening the burdens of

government.” Crerar, *supra* at 643. The criterion enumerated in Crerar has been incorporated into Illinois regulatory law at 86 Ill. Admin. Code, ch. I, sec. 130.2005(i)(2).

Applicant argues that it meets the regulatory and case law definition of a “charity” because it promotes the well-being of society by fostering interest in the development of skills critical to the nation's economic health and well-being. The gravamen of the Applicant's claim is that the dissemination of hands-on skills and knowledge of aviation science essential to aircraft manufacturing is a form of educational charity. Tr. pp. 13, 14. (“The evidence will show that ... [the Applicant] ... is strictly charitable; that the beneficiaries or its charitable endeavors are individuals all of whom apply and are accepted ... and that the purpose of the corporation is to further through education and experience a situation where people would be encouraged to go into engineering, go into manufacturing, go into flight, and those aspects which would benefit society as a whole.”)

However, the Applicant fails to substantiate this argument by bringing itself within the Crerar definition of “charity.” Thus, there is no testimony in the record establishing how the Applicant's educational charity lessens what would otherwise be a government function or “burden.” Nor has the Applicant cited any authority holding that the instructional activities the Applicant engages in is a “charity.” Compare Randolph Street Gallery v. Zebullon, 315 Ill. App. 3d 1060 (1<sup>st</sup> Dist. 2000) (holding that integrating art and art education into the spectrum of community activity is a charity).

The government does not regulate, and has not found it necessary to address, instruction in aviation manufacturing and engineering. If the Applicant did not exist to

educate the public about aviation manufacturing and science, public interest would not dictate that the state meet the demand for this type of instruction.

Applicant argues that, even if it does not alleviate a public burden, it must still be recognized as a charity eligible for exemption if it makes a public benefit available to an indefinite number of persons (citing Friends of Israel Defense Fund, *supra*; see Applicant's Memorandum of Law at p. 5). However, for the reasons noted above, the Applicant's dissemination of its unique form of instruction is not designed to benefit an indefinite number of persons because, practically speaking, participation in such programs is limited to those fortunate enough to attend institutions in the proximity of the Applicant that are selected by the Applicant to participate in Applicant's activities and agree to pay Applicant's participation fee.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Department's denial of the taxpayer's request for sales tax exemption be upheld.

Ted Sherrod  
Administrative Law Judge

Date: March 15, 2005